

REMARKS

In the Office Action dated May 28, 2008, claims 19-25 and 37-39 were presented for examination. Claim 19 was rejected under 35 U.S.C. §112, second paragraph. Claims 19, 20, 24, 25, 37, and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Black et al.*, U.S. Patent No. 5, 878,056 (hereinafter *Black*), in view of *Lubbers et al.*, U.S. Patent Publication No. 2003/0188233. Claims 21-23 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Black et al.*, U.S. Patent No. 5, 878,056, in view of *Lubbers*, U.S. Patent Publication No. 2003/0188233, and further in view of AAPA.

The following remarks are provided in support of the pending claims and responsive to the Office Action of May 28, 2008 for the pending application.

I. Rejection under 35 U.S.C. §112, second paragraph

In the Office Action dated May 28, 2008, the Examiner rejected claim 19 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. More specifically, the Examiner noted the use of “a second queue manager” and a “second server” without mentioning a first queue manager. However, in reading the claim, Applicant is claiming a first server and a second server, and the elements associated with the title of the respective servers. The SAN controller is local to the first server and is employed to manage the queue in the SAN. There is no indefiniteness associated with these terms of the claim. Rather, the term identified as “second” are identifying terms to associate the elements of the identified second server with that specific server, and to further delineate the elements that are not a part of the second server. Accordingly, Applicant respectfully requests that the Examiner reconsider this rejection and to remove the rejection of claims 19-25 under 35 U.S.C. §112, second paragraph.

II. Rejection of Claims 19, 20, 24, 25, 37, and 38 under 35 U.S.C. §103(a)

In the Official Action of November 14, 2007, the Examiner rejected claims 19, 20, 24, 25, 37, and 38 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,878,056 to *Black et al.* (hereinafter *Black*) in view of U. S. Patent Publication No. 2003/0188233 to *Lubbers et al.* (hereinafter *Lubbers*),.

Applicant's remarks pertaining to *Black* in the prior Office Action response are hereby incorporated by reference.

As noted by the Examiner, *Black* "does not explicitly disclose a computer system comprising a storage area network."¹ The Examiner employs *Black* in relation to an asynchronous message and queue system. See Col. 9, lines 13-30. However, Applicant's invention pertains to an asynchronous message and queue system in communication with a SAN, and more specifically, a SAN controller. The message queue of Applicant is a centrally held queue held in the SAN storage media and is managed by the SAN controller. *Black* does not teach a centralized queue in the manner claimed by Applicant; *Black* teaches multiple queues local to application servers and managed by local queue managers. Each local queue can be accessed only by its local queue manager. More specifically, each application interacts only with its local queue manager, and it is the network of interconnected queue managers that is responsible for moving the messages to the intended queues. Accordingly, *Black* does not teach a central queue that is stored in the storage area network and is accessible to all application serves.

In fact, the Examiner notes that *Black* "does not explicitly disclose the communication network to be a storage network." Office Action, page 3. As such, *Black* does not teach a queue in the storage area network, or aspects associated with message passing to a storage area network controller.

¹See Office Action page 3.

The Examiner combines *Black* with *Lubbers* since *Lubbers* teaches a storage area network (SAN). The Examiner cites *Lubbers* to support a storage area network, SAN. However, *Lubbers* does not teach a SAN with a centrally located queue. Applicant's invention is not merely limited to a SAN. Rather, Applicant's invention employs a centrally located queue in the SAN to maintain central message data. The Examiner does not state in the Office Action that *Lubbers* teaches a SAN controller. Rather, the Examiner states that *Lubbers* is employed to teach a SAN, not the properties or configuration of the SAN or more specifically, the centrally maintained queue in the SAN as claimed. Applicant previously amended the claims to more specifically claim the structure of the SAN with respect to the SAN controller and the queue. Accordingly, in view of the prior amendment to the claims, it is clear that the prior art reference of *Lubbers* does not teach the novel elements of Applicant's invention.

Applicant's invention pertains to control and management of messages at the network level and eliminates issues associated with server failure and loss of any messages stored thereon at the time of failure. It is the SAN controller that is employed by Applicants to manage a queue wherein the queue is maintained in a central location. "To establish a rejection under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested on the prior art."² If the prior art references do not teach or suggest every claim limitation of the Applicant's invention, then they do not meet every requirement under 35 U.S.C. §103(a) and are not sufficient to uphold a rejection under 35 U.S.C. §103(a). There is no teaching in either *Black* or *Lubbers* to employ a SAN controller to manage a centrally located queue in the manner claimed by Applicant.

Furthermore, based upon the record before us, it appears that the Examiner is employing a biased hindsight reconstruction to parse the claimed elements. "A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning."³ There is always a temptation to read into the prior art the teaching of

² MPEP §2143.03 (Citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

³ *KSR International Co. v. Teleflex Inc. et al.*, 550 U.S. ____, 127 S.Ct. 1727 (2007), citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

the invention. This is probably truer in some areas of technology more than others. However, the regardless of the ordinary skill in the art, it is clear that *Lubbers* does not employ a central queue in a SAN, or a controller for managing the central queue. As noted by the Examiner, *Black* does not teach a SAN. See Office Action, page 3. Accordingly, it is Applicant's position that *Lubbers* is not a proper reference for application under 35 U.S.C. §103(a) as one of ordinary skill in the art would not have reasonably expected to look for a solution in *Lubbers* to the problem faced by Applicant, as *Lubbers* does not pertain to a centrally managed queue in the SAN and a controller for managing the central queue.

Based upon the current standard of the law of obviousness under 35 U.S.C. §103(a), it is Applicant's position that the rejection set forth by the Examiner is improper and should be removed. Accordingly, Applicant respectfully requests removal of the rejection of claims 19, 20, 24, 25, 37, and 38, and respectfully request allowance thereof.

III. Rejection of Claims 21-23 and 39 under 35 U.S.C. §103(a)

In the Official Action of May 28, 2008, the Examiner rejected claims 21-23 and 39 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,878,056 to *Black et al.* (hereinafter *Black*) in view of U.S. Patent Publication No. 2003/0188233 to *Lubbers et al.* (hereinafter *Lubbers*), and further in view of Applicant's Admitted Prior Art (hereinafter *AAPA*).

Applicant's remarks pertaining to *Black*, *Lubbers*, and *AAPA* in both the prior Office Action response and above in this response are hereby incorporated by reference.

As noted above by Applicant, the combination of *Black* and *Lubbers* do not teach the elements of Applicant's amendments submitted herewith. Although *AAPA* discusses employment of a "connection handle" associated with an asynchronous message and queuing system, *AAPA* fails to teach such a limitation with respect to a SAN in general, or to a SAN controller in specific, as specified in the current amendment to the claims. Each of the claims in

this rejection are dependent claims from an independent claim that includes a SAN controller in association with a claimed queue. There is no teaching in *Black*, *Lubbers*, or *AAPA* for a SAN controller to manage a queue in the manner claimed by Applicant. *AAPA* discusses a connection handle associated with messaging, but not in relation to a SAN controller. It would not be obvious to combine the prior art teachings of *Black*, *Lubbers*, and *AAPA* since combining these three prior art references fail to teach all of the element claimed by Applicant. To establish a rejection under 35 U.S.C. § 103(a), all the claim limitations must be taught or suggested in the prior art.⁴ If the prior are references do not teach or suggest every claim limitation of the Applicant's invention, then they do not meet every requirement under 35 U.S.C. § 103(a) and are not sufficient to uphold a rejection under 35 U.S.C. § 103(a).⁵ The Examiner has not established a prima facie case of obviousness with respect to the aforesaid set of claims, since the combination of references comes short of teaching each of the elements claimed by Applicant.

IV. Conclusion

In view of the forgoing amendment to the claims, it is submitted that all of the claims remaining in the application are now in condition for allowance and such action is respectfully requested. Applicant is not conceding in this application that those claims in their prior forms are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the application. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

⁴ MPEP §2143.03 (Citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

⁵ See MPEP §2143.

For the reasons outlined above, an allowance of this application is respectfully requested.

Respectfully submitted,

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Date: July 28, 2008